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No.: 067336-0014

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of	:	Customer Number: 20277
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Kamimura, ICHIRO, et al.	:	Confirmation Number: 8795
	:	
Application No.: 10/674,814	:	Tech Center Art Unit: 3749
	:	
Filed: October 01, 2003	:	Examiner: Gravini, Stephen Michael
	:	
For: DRIER	:	

REPLY BRIEF

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is submitted in response to the Examiner's Answer mailed June 13, 2006.

ARGUMENT

Initially, Appellants acknowledge the Examiner's withdrawal of the rejection of claim 1 under 35 U.S.C. § 102 for lack of novelty as evidenced by Goldberg, and the Examiner's withdrawal of the rejection of claims 2 and 3 under 35 U.S.C. § 103 for obviousness predicated upon Goldberg in view of Ebara. The Examiner maintained but rewired the rejection of claim 1 under 35 U.S.C. § 102 for lack of novelty as evidenced by Brown and the rejection of claims 2 and 3 under 35 U.S.C. § 103 for obviousness predicated upon Brown in view of Ebara.

As indicated in the Appeal Brief submitted May 8, 2006, Appellants do not separately argue the patentability of claims 2 and 3, which claims 2 and 3 stand or fall together with independent claim 1 as a group. Appellants submit that the imposed rejection of claim 1 under 35 U.S.C. § 102 for lack of

novelty as evidenced by Brown is not factually viable for the reasons expressed in the May 6, 2006 Appeal Brief and for reasons expressed below.

The Examiner made inaccurate factual determinations as to the teachings of Brown and misconstrued the claimed invention. In rewiring the rejection under 35 U.S.C. § 102 the Examiner has, in fact, exacerbated the distinctions between the claimed drier and Brown's drier.

The claim requirement for sequentially connected compressor, gas cooler, pressure reducing device and evaporator.

In the reconstructed rejection of claim 1, the Examiner, on page 4 of the Answer, misconstrued Fig. 2 of Brown as illustrating a refrigerant circuit constituted by sequentially connected compressor 60, gas cooler 66, pressure reducing device 64 and evaporator 62. The Examiner is wrong, because the identified compressor 60 is **not sequentially connected** to what the Examiner has now termed gas cooler 66. Rather, compressor 60 is sequentially connected to what the Examiner called evaporator 62 which in turn is sequentially connected to pressure reducing device 64 and finally gas cooler 66. **There is no apparent connection between compressor 60 and gas 66.**

The claim requirement for a refrigerant circuit in an annular shape.

In the same paragraph elaborating upon the rejection of claim 1 on page 4 of the Answer, the Examiner announces "an annular shape 30". But saying so does not make it so, and the Examiner did not point to any factual basis to support the assumption that element 30, identified by Brown as a "double wall housing" (column 2, line 56), is annular in shape. Rather, it is depicted with straight sides. It is of interest that Brown is familiar with the term "cylindrical" (column 2, lines 49 and 50), but appears to but refraining from indicating that element 30 has any curvature. The Examiner appears

to base his assumption on the theory that it is possible to form an annular double wall enclosure (last 4 lines on page 4 of the Answer). However, possibilities are not facts. It is not apparent and the Examiner did not specifically identify, as required, wherein housing 30 is annular. *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).

Assuming, *arguendo*, that an annular path appears **within double wall housing 30**, i.e., space 31 between inner wall 30A and outer wall 30B, Appellants note that not one of the elements (compressor, gas cooler, pressure reducing device and evaporator) is positioned within such space 31. However as noted above, there is no factual basis to even say that such a space 31 is annular in shape, simply because it is conceivable to form two walls to define annular shape.

The blowing means.

Beginning at line 1, on page 5 of the Answer, the Examiner identifies the blowing means as “50’, 46, 50”, 42, 52”, 48, 52””. This interpretation of the claimed invention is erroneous.

The Examiner attempts to justify construing the recited blowing means to include a fan and two openings in one compartment and a fan and two openings in another compartment, based upon paragraphs [0006], [0060] and [0085] of the published Application. However, according to paragraph [0006] of the published Application, blower 114 is followed by the parenthetical expression “(equivalent to blowing means of the present invention)”. The only reasonable interpretation of the blowing means of the claimed invention, consistent with and in the context of the present invention, is that the blowing means is a blower, fan, or equivalent thereof. Two blowing means and four openings in different compartments can hardly be considered an equivalent to a blower or fan. *Valmont Indus.*

Inc. v. Reinke Mfg. Co., Inc., 983 F.2d 1039, 1043 925 USPQ2d 1451) Fed. Ct. 1993); (*Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) (*en banc*)).

The claim requirement for the blowing means to be positioned in an air circulation path between the gas cooler and the evaporator.

The Examiner maintains that the claim limitation requiring the blower to be positioned between the gas cooler and evaporator in an air circulation path is new matter. The Examiner has not imposed a rejection under the first paragraph of 35 U.S.C. § 112 for lack of adequate descriptive support, because the Examiner cannot. The Examiner can only say it is new matter. The Examiner cannot demonstrate it is new matter.

Appellants are unaware of any “current Office practice” (last line on page 7 of the Answer), which permits Examiners to ignore claim limitations because they assert a lack of descriptive support in the originally filed disclosure. Indeed, the law appears to be to the opposite. *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff’d. mem.*, 783 738 F.2d 453 (Fed. Cir. 1984). The Examiner attempts to justify ignoring the claim requirement by finding isolated instances in the specification where the blowing means is mentioned but that its exact position is not specified. It is not Appellants understanding of the law that an assertion of lack of adequate descriptive support is justified by isolating sentences where an element is not described while ignoring the disclosure as a whole and how one having ordinary skill in the art would have interpreted the disclosure. *Inverness Med. Switzerland GmbH v. Alcon Laboratories, Inc.*, ___ F.3d ___, 77 USQP2d 1693 (Fed. Cir. 2005).

Adverting to the paragraph bridging pages 8 and 9 of the Answer, it appears that the Examiner would require *ipsis verbis* support for a claim limitation, which is not the law. *Inverness Med. Switzerland GmbH v. Alcon Laboratories, Inc.*, *supra.*; *Wang Laboratories, Inc. v. Toshiba Corp.*, 993

F.2d 858, 26 USPQ2d 767 (CAFC 1993). The Examiner's focus on a two dimensional drawing wherein the blowing means is illustrated vertically lower but not directly under the evaporator and gas cooler ignores the fact that the blowing means is positioned between the gas cooler and evaporator. The Examiner's assertion that the claim limitation is construed broadly actually ignores the claim limitation.

The Examiner also appears to have interpreted the entire interior of air treatment unit 10 as an air circulation path. This is not a reasonable interpretation of the air circulation path of the claimed invention, and each of fans 46 and 48 is positioned off to the side of any gas cooler and evaporator, which are located in different chambers.

Conclusion.

The above argued structural differences between the claimed drier and Brown's drier undermine the factual determination that Brown discloses a drier identically corresponding to that claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986). Appellants, therefore, solicit the Honorable Board to reverse the Examiner's rejection of claim 1 under 35 U.S.C. § 102 for lack of novelty as evidenced by Brown, and the rejection of claims 2 and 3 under 35 U.S.C. § 103.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due under 37 C.F.R. 1.17 and 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

10/674,814

Respectfully submitted,

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